

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13133 OF 2018
WITH
WRIT PETITION NO. 13134 OF 2018

Gajanan Shankar Rane through
his C.A.

...Petitioner.

vs.

The State of Maharashtra and ors.

...Respondents.

Mr. A.S.Khandeparkar with Mr. A. K. Karandikar i/by Khandeparkar &
Associates for the Petitioner.

Smt. P.N.Diwan, AGP. for the State-Respondent No.1.

Mr.Sanskar Marathe for Respondent No.3.

CORAM : R.M.BORDE AND V.L. ACHLIYA, JJ.

DATE : 23rd January, 2019

JUDGMENT : (Per R. M. Borde, J.)

1. Leave to add competent authority as party respondent. The amendment to be carried out forthwith. Learned APP. appears for added respondent.

2. Heard.

3. Rule. Rule returnable forthwith by consent of the parties.

4. The petitioner claimed his entitlement in relation to the property which has been acquired for the National Highway and award of land acquisition has been declared under the provisions of National Highway Act, 1956. The petitioner contends that, while the competent authority determined the amount of compensation, the petitioner tendered an application recording objection as regards the entitlement for the amount sought to be disbursed in favour of respondents herein. The petitioner contends that, he is the member of joint family and is entitled to claim share in the amount of compensation determined under the award by the competent authority. While dealing with the objection of the petitioner instead of referring the dispute for adjudication of the civil court, the competent authority determined the issue of entitlement of the objector. The competent authority has recorded the reasons for rejecting the claim of the objector and the said order passed by the competent authority dated 01.10.2018 is a matter of challenge before this Court.

5. Section 3H(4) of the National Highway Act, 1956 provides that, if

any dispute arises as to the apportionment of the amount or any part

thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

6. In the instant petitions, instead of taking recourse of section 3H(4) of Act of 1956, the competent authority itself has proceeded to determine the entitlement of the respondents and has drawn a conclusion that, the petitioner has no right, or title in relation to the property. It is not within the domain of the competent authority to deal with the issues which are required to be dealt with by the civil court in view of the provisions of the Act. The order passed by the competent authority is not sustainable and deserves to be set aside and the same is accordingly set aside.

The competent authority- respondent No.4 shall refer the objection/application tendered by the petitioner for adjudication to the principal civil court of original jurisdiction within limits of whose

jurisdiction the land is situated. The order impugned in this petition

passed by the competent authority is accordingly quashed and set aside and it is directed to the Competent Authority to take necessary steps as expeditiously as possible within six weeks from today. It will be open for the respondents considering the peculiar facts and circumstances of the case to tender application seeking withdrawal of amount. The competent authority shall refer the dispute for adjudication to the court and also transfer the amount of compensation determined under the award to the concerned principal civil court of original jurisdiction.

7. It would be open for respondent Nos. 2 and 3 to tender application seeking withdrawal of the amount of compensation which would be deposited with the civil court. In view of peculiar facts of this case, we direct the civil court to permit the concerned respondents i.e. respondents 2 and 3 to withdraw the amount subject to tendering an undertaking to the court to the effect that in the event of success of the objector/petitioner before the civil court, the concerned respondent i.e.

claimants would deposit the amount in accordance with the directions

that would be issued by the civil court while concluding the civil proceedings, together with the amount of interest which shall be computed according to the provisions of Land Acquisition Act, 2013 within a period of four months from the date of such determination.

In view of the above directions, writ petition is disposed off.

(V.L. ACHLIYA, J.)

(R.M. BORDE, J.)